

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,708

IN THE MATTER OF:

Served June 26, 2015

WASHINGTON SHUTTLE, INC., Trading	)	Case No. MP-2011-099
as SUPERSHUTTLE, WMATC No. 369	)	
Investigation of Violation of	)	
Commission Regulation No. 64	)	

This matter is before the Commission on respondent's response to Order No. 15,288, served January 6, 2015, assessing a \$2,000 civil forfeiture and directing respondent to produce certain documents for the fourth quarter of calendar year 2014 and the first quarter of calendar year 2015.

**I. BACKGROUND**

This investigation was initiated on November 28, 2011, in Order No. 13,063 to assess respondent's compliance with the Commission's safety regulation, Regulation No. 64, in the wake of a fatal crash on the Dulles Access Road involving one of respondent's 10-passenger vans.

The investigation began with a review of respondent's compliance with the Federal Motor Carrier Safety Regulations (FMCSRs)<sup>1</sup> adopted in WMATC Regulation No. 64.

A comprehensive onsite safety compliance review and evaluation of respondent's records and vehicles yielded a proposed safety rating of "Unsatisfactory" on March 1, 2012.<sup>2</sup> The violations warranting the Unsatisfactory rating involved failure to comply with 49 C.F.R. §§:

- 391.51(b)(2) -Inquiries into drivers' motor vehicle records
- 391.51(b)(7) - Medical Examiners' Certificates
- 395.8(a) - Driver's Record of Duty Status
- 396.3(b) - Minimum Records of Maintenance and Inspection
- 396.11(a) - Driver's Vehicle Inspection Report

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<sup>1</sup> The FMCSRs are published in Title 49 of the Code of Federal Regulations.

<sup>2</sup> An Unsatisfactory rating indicates that a carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard in 49 C.F.R. 385.5(a) and that a carrier is operating at an unacceptable level of compliance.

Respondent promptly corrected these violations, and its safety rating was upgraded by letter to "Conditional" on April 17, 2012, and by order to "Satisfactory" on February 5, 2013.<sup>3</sup>

The Commission then monitored respondent's safety compliance for all of 2013. The records produced by respondent for the first three quarters of 2013 raised no substantial issues. The documents produced for the fourth quarter revealed a violation of hours-of-service record-keeping requirements. At first, it appeared that on multiple occasions one of respondent's drivers had been on duty for more than 70 hours over the course of eight consecutive days - a violation of 49 C.F.R. § 395.5(b)(2). Later, it became clear that on-duty hours for two drivers had been entered in a single driver's record of duty status.

The Commission observed in Order No. 14,945, served July 25, 2014, that for this situation to have persisted for some 14 weeks could only be the result of a failure to adequately monitor driver hours-of-duty records. Accordingly, Order No. 14,945 gave respondent 30 days to show cause why the Commission should not assess a civil forfeiture against respondent for violating the hours of service record-keeping requirements in 49 C.F.R. § 395.8.<sup>4</sup>

In response, respondent described and documented the additional levels of review that respondent had subsequently implemented. According to respondent:

Each [vehicle] operator is now given an individual login number. All operators are required to login and logout at the beginning and end of each shift. If an operator intends to use a number which has already been used in the system recently, the system will give an "invalid operator ID" error message and inactivate the ID number.

Respondent further explained that each week, a manager uses the login data to verify the hours reported by each operator on respondent's "DOT Hours of Service" form.

Based on the foregoing, the Commission found in Order No. 15,288, served January 6, 2015, that combining the hours of two drivers into the record of one driver defeats the purpose of hours-of-service record-keeping requirements, which is to facilitate enforcement of the hours of service limitations in 49 C.F.R. § 395.5.

For violating hours-of-service record-keeping requirements, the Commission assessed against respondent a \$2,000 civil forfeiture in

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<sup>3</sup> WMATC Order No. 13,726 at 3-4 (Feb. 5, 2013).

<sup>4</sup> In retrospect, it appears that the Commission should have cited the comparable provision in 49 C.F.R. § 395.1(e)(1) for short haul operators such as respondent whose drivers operate within a 100 air-mile radius of the normal work reporting location.

Order No. 15,288, pursuant to Article XIII, Section 6(f), of the Compact, and declared that the monitoring of respondent's hours-of-service records would continue for the fourth quarter of calendar year 2014 and the first quarter of calendar year 2015.

## **II. RESPONSE TO ORDER NO. 15,288 AND COMMISSION FINDINGS**

Respondent paid the \$2,000 forfeiture on January 15, 2015, and cooperated with WMATC's monitoring of respondent's hours-of-service records for the two quarters ended March 31, 2015. A review of those records reveals that respondent's employees are maintaining the individual records of daily duty status required under 49 C.F.R. § 395.1(e)(1), that respondent's management is reviewing those records on a continuous basis, and that respondent's drivers appear to be complying with the hours-of-service limitations in 49 C.F.R. § 395.5.

## **III. CONCLUSION**

In light of the accident investigator's identification of driver error as the cause of the fatal crash in 2011, and after three and one half years, nearly \$13,000 in assessed costs, \$8,000 in civil forfeitures, respondent's improved record of overall safety compliance in 2013, and respondent's satisfactory record of hours-of-service compliance in the most recent two quarters, we conclude that this investigation has served its purpose of ensuring that the operations of the area's largest airport shuttle operator comply with applicable safety regulations.

Accordingly, this proceeding hereby stands terminated.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND DORMSJO:

A handwritten signature in black ink, appearing to read 'William S. Morrow, Jr.', is positioned above the printed name.

William S. Morrow, Jr.  
Executive Director